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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JEANETTE RAMIREZ SMITH; et al.,

11 Plaintiffs,

12 vs.

13 MOSS GARDENS APARTMENTS,
14 L.P. dba MOSS GARDENS
APARTMENTS; et al.,

15 Defendants.

CASE NO. 12-cv-2568 BEN (RBB)

**ORDER SUA SPONTE
DISMISSING WITH LEAVE TO
AMEND**

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17 Federal courts have an obligation to *sua sponte* inquire as to their jurisdiction,
18 because Article III, § 2 of the Constitution limits the jurisdiction of federal courts to
19 ongoing “cases” or “controversies.” *Arizonans for Official English v. Arizona*, 520
20 U.S. 43, 64 (1997); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11-12
21 (2004). To invoke federal jurisdiction, Article III demands that a plaintiff show that
22 he or she has “suffered a concrete and particularized injury that is either actual or
23 imminent.” *Id.* As the Ninth Circuit put it, “[i]t is an inexorable command of the
24 United States Constitution that the federal courts confine themselves to deciding
25 actual cases and controversies. See U.S. CONST. art. III, § 2, cl. 1.” *Gator.com*
26 *Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1128-29 (9th Cir. 2005). Because Plaintiffs
27 have invoked jurisdiction under 28 U.S.C. §1331 (*i.e.*, federal question jurisdiction)
28 based solely on alleged violations of the Federal Housing Act, 42 U.S.C. §3601 *et*

1 *seq.*, the Court considers whether Plaintiffs have articulated a substantial federal
2 question sufficient to invoke federal jurisdiction.

3 As alleged in the Complaint, in April 2007, Jeanette Ramirez Smith and Jorge
4 Fajardo Muniz *moved into* Moss Gardens Apartments with their minor children.
5 (Complaint ¶ 15.) Plaintiffs allege that the manager for Moss Gardens Apartments,
6 “incessantly harassed Ms. Ramirez about allowing her children to play in the
7 common areas” of the property. (*Id.* ¶ 17.) On October 22, 2012, Plaintiffs filed
8 suit against Defendants Moss Gardens Apartments, L.P., Pennell Property
9 Management, Inc., Dennis H. Pennell, and Dennis H. Pennell, II, alleging that
10 Defendants discriminated on the basis of “familial status” in the operation of Moss
11 Gardens Apartments.

12 In 1968, Congress enacted the Federal Housing Act (“FHA”) to prohibit
13 discrimination against buyers and renters of residential housing. In 1988, Congress
14 enacted the Fair Housing Amendments Act amending the FHA and prohibited
15 housing discrimination on the basis of “familial status,” except in housing for older
16 persons. In 1995, Congress enacted the Housing for Older Persons Act, making
17 clear that where a community houses at least one person over 55 years of age in at
18 least 80% of the housing units, familial status discrimination is permissible. *See*
19 *Taylor v. Rancho Santa Barbara*, 206 F.3d 932, 935 (9th Cir. 2000).

20 Plaintiffs are silent as to whether the Moss Garden Apartments qualify as
21 housing for older persons. If so, there would be no federal case or controversy
22 about familial discrimination. This is the first flaw in their federal claim.

23 The second flaw is one of time limitations. Section 3613 of the Act limits the
24 private right of action to suits filed within two years of discriminatory events. This
25 case was filed in October 2012, making actionable acts more recent than October
26 2010. Yet, the Complaint speaks of many older events. For example, the
27 Complaint states, “[i]n April 2007. . . husband and wife moved into the apartment
28 complex.” (Complaint ¶ 15.) The Complaint continues, “[o]n multiple occasions

1 from 2007 to present,” and “[t]he problems started as far back as 2008,” and
2 “[s]ince 2007, Defendants have enforced a rule.” (*Id.* ¶ 17.) The Complaint further
3 alleges, “[o]n many occasions since 2007,” and “[o]n at least three occasions in
4 2008,” and “[i]n July 2010” (*Id.* ¶ 17.)

5 There are only two events that are specifically alleged to have occurred
6 within the two-year period preceding the Complaint. One event occurred in April
7 2011. At that time the apartment manager allegedly became upset at the minor
8 Plaintiffs for playing in the common area.

9 That a manager became upset in April 2011 is, without more, a legal trifle
10 that is too insubstantial to invoke the jurisdiction of a federal court. *Skaff v.*
11 *Meridien N. Am. Beverly Hills, LLC*, 506 F.3d 832, 839-40 (9th Cir. 2007)
12 (collecting cases) (“The ancient maxims of *de minimis non curat lex* and *lex non*
13 *curat de minimis* teach that the law cares not about trifles.”); *see also McKee v.*
14 *Turner*, 491 F.2d 1106, 1107 (9th Cir. 1974) (“We, therefore, hold that McKee’s
15 case is *de minimis*, and does not present a justiciable controversy.”).

16 The other event took place in October 2012 when a Notice of Termination of
17 Tenancy was served upon Plaintiffs. Terminating a lease for a discriminatory
18 reason would not be a trifle. However, Plaintiffs offer only the conclusory assertion
19 that the notice was “primarily due to the fact that Plaintiffs had refused to obey the
20 continued order to stop letting their children play in the common areas.” This fails
21 to describe discrimination based on familial status. Moreover, the Complaint is
22 silent as to the stated reason given for the termination notice. It is plausible that the
23 termination notice was for a pedestrian reason such as non-payment of rent, rather
24 than a reason violating the FHA. Even Plaintiffs’ assertion that the termination
25 notice was based upon the minor plaintiffs’ continued playing could equally
26 describe landlord action based on disruptive or unsafe behavior as well as
27 discrimination based on familial status. It is significant that the Complaint does not
28 allege that individuals over 18 years of age were permitted to play with balls, toys,

1 or bikes in the apartment common areas, while families with minor children were
2 not permitted. In other words, all that Plaintiffs have alleged is that Defendants
3 enforced a no-playing rule that may have been applied equally to all ages of
4 residents. A controversy over generally-applicable rules of housing behavior
5 fashioned to achieve non-discriminatory ends does not create a justiciable
6 controversy under the Federal Housing Act. The instant Complaint fails to allege
7 more.

8 A third problem is that the Fair Housing Act, by its terms, generally extends
9 to those who *buy or rent* housing. *See e.g.*, 42 U.S.C. §3604(a) (“It shall be
10 unlawful . . . to refuse to sell or rent . . .”); §3604(b) (“It shall be unlawful . . . to
11 discriminate against any person in the terms, conditions, or privileges of sale or
12 rental of a dwelling . . .”); §3604(c) (“It shall be unlawful . . . to make, print, or
13 publish . . . with respect to the sale or rental . . .”); §3604(d) (“It shall be
14 unlawful . . . to represent to any person . . . that any dwelling is not available for
15 inspection, sale or rental . . .”). The Complaint does not allege that the Plaintiffs
16 *rented* an apartment at the Moss Garden Apartments. The Complaint states that
17 they “*moved into*” the apartment complex in 2007. (Complaint ¶ 15 emphasis
18 added.) The Complaint further alleges that the manager harassed Ms. Ramirez,
19 “[d]uring the time that Ms. Ramirez and her family *has lived at* the Subject
20 Property,” rather than during the time Plaintiffs *have rented* at the property.
21 (Complaint ¶ 17 emphasis added.) Plaintiffs do not come within the protection of
22 the Act if they have not bought or rented or offered to buy or rent housing from the
23 Defendants.

24 In conclusion, because the Complaint does not describe a federal controversy
25 substantial enough to invoke federal jurisdiction, and because the remaining state
26 law claims depend upon the existence of a live federal claim for supplemental
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1 jurisdiction,¹ this case is dismissed without prejudice. Plaintiffs may file an
2 amended complaint within 30 days of this Order.

3 **IT IS SO ORDERED.**

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5 DATED: August 6, 2013

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8 Hon. Roger T. Benitez
9 United States District Judge
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28 ¹See 28 U.S.C. §1367(c); *Comm. Concerning Cmty. Improvement v. Modesto*,
583 F.3d 690, 715 & n.16 (9th Cir. 2009).